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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
HAYES, JOHN W	

ART UNIT	PAPER NUMBER
3621	

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/866,191	RABENOLD ET AL.	
	Examiner	Art Unit	
	John W Hayes	3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 March 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *74-83* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *74-82* is/are rejected.

7)☒ Claim(s) *83* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 October 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. Applicant has canceled all claims of record (1-73) and added new claims 74-83 in the amendment filed 09 March 2004. Thus, claims 74-83 are the only claims pending and are presented for examination.

Response to Arguments

2. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection with the exception of the following:

Applicant argues that the Friedland reference does not disclose or suggest the use of a clerk system of the present invention. Applicant further asserts that the auctioneer does not have any information indicating the identity of the remote bidders; and that the clerk system has the ability to accept and reject bids either automatically, under the direction of the auctioneer or under the control of a clerk being directed by an auctioneer. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., identity of the remote bidders; the clerk system accepting/rejecting bids either automatically, under the direction of the auctioneer or under the control of a clerk being directed by an autioneer) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further argues that Friedland does not teach or suggest the element of a clerk system that can accept or reject auction bids. Examiner respectfully disagrees with this characterization of Friedland and notes that Friedland discloses collector/distributor nodes that are interconnected and serve to efficiently collect and filter bids from a large number of remote bidders and pass potentially winning bids onto the auction server (Col. 3, lines 23-37). The collector/distributor nodes filter the bids using a variety of criteria to ensure the bid meets certain requirements, accepts bids that meet these requirements and forwards these bids to the server computer (Col. 9, lines 50-63). Collector/distributor

nodes also checks the bid amount against the current high bid to ensure that the bid is higher than the current highest bid before it is accepted and forwarded to the auction server (Col. 17, lines 14-27). These bids may be accepted and passed to the auctioneer during the auction process for acceptance (Col. 3, lines 44-49; Col. 8, lines 35-40). Friedland further discloses that onsite bids are accepted and entered into the auction console (Col. 7 line 62-Col. 8 line 5). Examiner submits that this disclosure in Friedland reads on the "clerk system" recited in the claims and is equivalent to the recited claim language since Friedland discloses elements to perform the functions of "processing auction bids from one or more onsite bidders and remote auction bidders for an item being auctioned at a live auction site".

Applicant also argues that Friedland does not teach or suggest an audio system that provides a live audio feed and/or a video system that provides a live video feed to the remote bidders. Applicant asserts that Friedland discloses only that a remote bidder can listen to a live broadcast of the auction via various communication mediums, however, this does not describe a mechanism for such a function to be integrated into the bidding system. Examiner respectfully disagrees and submits that Friedland discloses that the remote bidders submit bids via a DLA client program running on a remote bidders computer and transmit the bid using the Internet (Col. 8, lines 27-32). Friedland also discloses that remote bidders monitor the live auction via the status information broadcast from the DLA auction server, and may also listen to the auction or watch the action via real-time video broadcast of the live auction captured by one or more recording devices and transmitted to the remote bidders via the Internet or possibly through other communications media (Col. 8, lines 17-27). Examiner submits that this teaching in Friedland meets the language recited in at least claims 76, 77 and 80-82. Claims 80-82 recite the term "streaming". Streaming is defined as "One the Internet, the process of delivering information, especially multimedia sound or video, in a steady flow that the recipient can access as the file is being transmitted" by Microsoft Computer Dictionary, Fourth Edition, copyright 1999. Examiner notes that the courts have reviewed the law of claim interpretation at some length, and explained that dictionaries, encyclopedias and treatises are reliable and objective resources available to assist the court in determining the ordinary and customary meaning of claim terms. See *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 64 USPQ2d 1812 (CAFC 2002) and *Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 65 USPQ2d 1961,

1965 (Fed. Cir. 2003). Examiner submits that the teachings of Friedland meet the definition of "streaming" since Friedland discloses real-time audio and video broadcast via the Internet.

Specification

3. The amendment filed 31 October 2003 is objected to under 35 U.S.C. 132 because it appears to introduce new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which does not appear to be supported by the original disclosure is as follows:

a. Page 24, line 6; the added language "two times, three times, four times and five times" appears to be new matter and changes the scope of the previous language.

b. Page 24, line 13; the added language "If two or more remote bidders submit bids of different values....sells the item" appears to be new matter and changes the scope of the previous language.

c. Page 3 line 27-Page 4 line 9; the added language "Dual modems.....quality of the encoded video" appears to be new matter and changes the scope of the previous language/

Applicant is required to specifically point out where support can be found for this added language in the original specification or cancel the new matter in the reply to this Office Action.

Furthermore, examiner has not reviewed each and every amendment to the specification, however, requests that applicant ensure that no new matter has been introduced.

Drawings

4. The drawings were received on 31 October 2003. These drawings are accepted by the examiner.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matt r sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 74, 76-78 and 80-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedland et al, U.S. Patent No. 6,449,601 B1 in view of Dinwoodie, U.S. Patent No. 6,415,269 B1.

As per **Claim 74**, Friedland et al disclose a system that integrates a remote auction audience with an onsite auction audience within a traditional-style, live auction while leaving an auctioneer in complete control of the auction event (Col. 2 line 65-Col. 3 line 8; Col. 6, lines 45-50; Col. 7, lines 62-65; Col. 9, lines 50-57), comprising:

- clerk system operable to process auction bids from one or more onsite auction bidders and remote auction bidders for an item being auctioned at a live auction site (Col. 3, lines 23-49; Col. 7 line 62-Col. 8 line 5; Col. 8, lines 35-40; Col. 9, lines 50-63; Col. 13, lines 39-45; Col. 17, lines 14-27; Col. 20, lines 1-17);

- bid system operable to transmit to one or more remote auction bidders auction information for items being auctioned at the live auction site, for receiving auction bids from one or more remote auction bidders for items being auctioned at the live auction site, and for transmitting to one or more remote auction bidders information regarding the acceptance and rejection of the onsite and remote auction bids (Col. 3, lines 23-38; Col. 7, lines 34-43; Col. 8, lines 12-17 and 39-50; Col. 13, lines 29-46; Col. 14, lines 44-58; Col. 16, lines 25-30; Col. 20, lines 10-17);

Friedland et al, however, fail to explicitly disclose that the clerk system and bid system being event-driven systems operating subject to the occurrence of non-time based events, the non-time based events occurring under the direction of the auctioneer, whereby the auctioneer manages the psychology and the pace of the auction. Dinwoodie discloses an interactive remote auction bidding system and teaches that the auction site comprises a location remote from the participants at which bids are accepted and the auction is controlled by an auctioneer located at the auction site. The auctioneer functions in a capacity similar to the capacity of an auctioneer in a typical auction where participants are located at the

auction site (Col. 3, lines 17-24). The auctioneer inputs data relating to lot number, initial asking bid, predefined increments and foreign conversion factors (Col. 4, lines 48-54). The auctioneer is in complete control of the auction by deciding whether or not an accepted bid was the final asking bid for the lot (Col. 5, lines 60-65); adjusting in real-time a new asking bid (Col. 6, lines 1-5); adjusting predetermined delays based upon the particular bidding environment and aggressiveness of the participants (Col. 6, lines 9-13); determining that the final asking bid has been accepted (Col. 6, lines 15-20); providing warnings that the current bid is about to be accepted as the winning bid and accepting the final bid (Col. 6, lines 19-25); blocking out all participants but the winning bidder and proceeds to the confirmation process with the winning bidder (Col. 6, lines 25-30); providing instructions to the winning bidder (Col. 6, lines 35-40) and reopening bidding to the entire audience at the level of the previous bid (Col. 6, lines 42-45). Thus, it can be seen from the teachings of Dinwoodie that the auctioneer is in control of the psychology and pace of the auction event and that the auction event is not driven by the occurrence of time based events. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Friedland et al and incorporate the teachings of Dinwoodie to allow the auctioneer to remain in control of the auction event by managing the psychology and pace of the auction such as in a typical auction format. This would allow the auctioneer the ability to manage the pace of the auction based upon factors such as the bidding environment and aggressiveness of the participants as suggested by Dinwoodie.

As per **Claim 76**, Friedland et al disclose a system that integrates a remote auction audience with an onsite auction audience within a traditional-style, live auction while leaving an auctioneer in complete control of the auction event (Col. 2 line 65-Col. 3 line 8; Col. 6, lines 45-50; Col. 7, lines 62-65; Col. 9, lines 50-57), comprising:

- an audio system that is operable to capture and transmit live audio data from a live auction site to one or more remote auction bidders each operating a bidding device (Col. 8, lines 15-27); and

- the bidding device being operable to receive the live audio data from the audio system (Col. 8, lines 15-27) and receive information pertaining to an item being auctioned at the live auction site and to

transmit a remote auction bid for the item being auctioned (Col. 3, lines 23-38; Col. 7, lines 34-43; Col. 8, lines 12-17 and 39-50; Col. 13, lines 29-46; Col. 14, lines 44-58; Col. 16, lines 25-30; Col. 20, lines 10-17).

- clerk system operable to process auction bids from one or more onsite auction bidders and remote auction bidders for an item being auctioned at a live auction site (Col. 3, lines 23-49; Col. 7 line 62-Col. 8 line 5; Col. 8, lines 35-40; Col. 9, lines 50-63; Col. 13, lines 39-45; Col. 17, lines 14-27; Col. 20, lines 1-17);

- bid system operable to transmit to one or more remote auction bidders auction information for items being auctioned at the live auction site, for receiving auction bids from one or more remote auction bidders for items being auctioned at the live auction site, and for transmitting to one or more remote auction bidders information regarding the acceptance and rejection of the onsite and remote auction bids (Col. 3, lines 23-38; Col. 7, lines 34-43; Col. 8, lines 12-17 and 39-50; Col. 13, lines 29-46; Col. 14, lines 44-58; Col. 16, lines 25-30; Col. 20, lines 10-17);

Friedland et al, however, fail to explicitly disclose that the clerk system and bid system being event-driven systems operating subject to the occurrence of non-time based events, the non-time based events occurring under the direction of the auctioneer, whereby the auctioneer manages the psychology and the pace of the auction. Dinwoodie discloses an interactive remote auction bidding system and teaches that the auction site comprises a location remote from the participants at which bids are accepted and the auction is controlled by an auctioneer located at the auction site. The auctioneer functions in a capacity similar to the capacity of an auctioneer in a typical auction where participants are located at the auction site (Col. 3, lines 17-24). The auctioneer inputs data relating to lot number, initial asking bid, predefined increments and foreign conversion factors (Col. 4, lines 48-54). The auctioneer is in complete control of the auction by deciding whether or not an accepted bid was the final asking bid for the lot (Col. 5, lines 60-65); adjusting in real-time a new asking bid (Col. 6, lines 1-5); adjusting predetermined delays based upon the particular bidding environment and aggressiveness of the participants (Col. 6, lines 9-13); determining that the final asking bid has been accepted (Col. 6, lines 15-20); providing warnings that the current bid is about to be accepted as the winning bid and accepting the final bid (Col. 6, lines 19-25);

blocking out all participants but the winning bidder and proceeds to the confirmation process with the winning bidder (Col. 6, lines 25-30); providing instructions to the winning bidder (Col. 6, lines 35-40) and reopening bidding to the entire audience at the level of the previous bid (Col. 6, lines 42-45). Thus, it can be seen from the teachings of Dinwoodie that the auctioneer is in control of the psychology and pace of the auction event and that the auction event is not driven by the occurrence of time based events. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Friedland et al and incorporate the teachings of Dinwoodie to allow the auctioneer to remain in control of the auction event by managing the psychology and pace of the auction such as in a typical auction format. This would allow the auctioneer the ability to manage the pace of the auction based upon factors such as the bidding environment and aggressiveness of the participants as suggested by Dinwoodie.

As per **Claim 77**, Friedland et al disclose a system that integrates a remote auction audience with an onsite auction audience within a traditional-style, live auction while leaving an auctioneer in complete control of the auction event (Col. 2 line 65-Col. 3 line 8; Col. 6, lines 45-50; Col. 7, lines 62-65; Col. 9, lines 50-57), comprising:

- an video system that is operable to capture and transmit live video data from a live auction site to one or more remote auction bidders each operating a bidding device (Col. 8, lines 15-27); and

- the bidding device being operable to receive the live video data from the audio system (Col. 8, lines 15-27) and receive information pertaining to an item being auctioned at the live auction site and to transmit a remote auction bid for the item being auctioned (Col. 3, lines 23-38; Col. 7, lines 34-43; Col. 8, lines 12-17 and 39-50; Col. 13, lines 29-46; Col. 14, lines 44-58; Col. 16, lines 25-30; Col. 20, lines 10-17).

- clerk system operable to process auction bids from one or more onsite auction bidders and remote auction bidders for an item being auctioned at a live auction site (Col. 3, lines 23-49; Col. 7 line 62-Col. 8 line 5; Col. 8, lines 35-40; Col. 9, lines 50-63; Col. 13, lines 39-45; Col. 17, lines 14-27; Col. 20, lines 1-17);

- bid system operable to transmit to one or more remote auction bidders auction information for items being auctioned at the live auction site, for receiving auction bids from one or more remote auction bidders for items being auctioned at the live auction site, and for transmitting to one or more remote auction bidders information regarding the acceptance and rejection of the onsite and remote auction bids (Col. 3, lines 23-38; Col. 7, lines 34-43; Col. 8, lines 12-17 and 39-50; Col. 13, lines 29-46; Col. 14, lines 44-58; Col. 16, lines 25-30; Col. 20, lines 10-17);

Friedland et al, however, fail to explicitly disclose that the clerk system and bid system being event-driven systems operating subject to the occurrence of non-time based events, the non-time based events occurring under the direction of the auctioneer, whereby the auctioneer manages the psychology and the pace of the auction. Dinwoodie discloses an interactive remote auction bidding system and teaches that the auction site comprises a location remote from the participants at which bids are accepted and the auction is controlled by an auctioneer located at the auction site. The auctioneer functions in a capacity similar to the capacity of an auctioneer in a typical auction where participants are located at the auction site (Col. 3, lines 17-24). The auctioneer inputs data relating to lot number, initial asking bid, predefined increments and foreign conversion factors (Col. 4, lines 48-54). The auctioneer is in complete control of the auction by deciding whether or not an accepted bid was the final asking bid for the lot (Col. 5, lines 60-65); adjusting in real-time a new asking bid (Col. 6, lines 1-5); adjusting predetermined delays based upon the particular bidding environment and aggressiveness of the participants (Col. 6, lines 9-13); determining that the final asking bid has been accepted (Col. 6, lines 15-20); providing warnings that the current bid is about to be accepted as the winning bid and accepting the final bid (Col. 6, lines 19-25); blocking out all participants but the winning bidder and proceeds to the confirmation process with the winning bidder (Col. 6, lines 25-30); providing instructions to the winning bidder (Col. 6, lines 35-40) and reopening bidding to the entire audience at the level of the previous bid (Col. 6, lines 42-45). Thus, it can be seen from the teachings of Dinwoodie that the auctioneer is in control of the psychology and pace of the auction event and that the auction event is not driven by the occurrence of time based events. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Friedland et al and incorporate the teachings of

Dinwoodie to allow the auctioneer to remain in control of the auction event by managing the psychology and pace of the auction such as in a typical auction format. This would allow the auctioneer the ability to manage the pace of the auction based upon factors such as the bidding environment and aggressiveness of the participants as suggested by Dinwoodie.

As per **Claim 78**, Friedland et al disclose a method for integrating a remote auction audience with an onsite auction audience within a traditional-style, live auction while leaving an auctioneer in complete control of the auction event (Col. 2 line 65-Col. 3 line 8; Col. 6, lines 45-50; Col. 7, lines 62-65; Col. 9, lines 50-57), comprising:

- transmit to one or more remote auction bidders auction information for items being auctioned at the live auction site (Col. 3, lines 23-38; Col. 7, lines 34-43, Col. 8, lines 12-27 and 39-50; Col. 13, lines 29-46; Col. 14, lines 44-58; Col. 20, lines 10-17);

- receiving auction bids from one or more remote auction bidders for items being auctioned at the live auction site (Col. 3, lines 23-38; Col. 8 lines 47-50; Col. 13, lines 40-45);

- processing auction bids from one or more onsite auction bidders and remote auction bidders for an item being auctioned at a live auction site (Col. 3, lines 23-49; Col. 7 line 62-Col. 8 line 5; Col. 8, lines 35-40; Col. 9, lines 50-63; Col. 13, lines 39-45; Col. 17, lines 14-27; Col. 20, lines 1-17);

- accepting an auction bid, the auction bid being accepted under the discretionary control of the auctioneer and the accepted auction bid is selected from a plurality of onsite auction bids and remote auction bids (Col. 3, lines 23-38; Col. 8, lines 35-50; Col. 13, lines 29-46; Col. 15, lines 1-7; Col. 20, lines 3-17);

- transmitting to one or more remote auction bidders information regarding the acceptance and rejection of the onsite and remote auction bids by the auctioneer (Col. 3, lines 23-38; Col. 7, lines 34-43; Col. 8, lines 12-17 and 39-50; Col. 13, lines 29-46; Col. 14, lines 44-58; Col. 16, lines 25-30; Col. 20, lines 10-17);

Friedland et al, however, fail to explicitly disclose that the clerk system and bid system being event-driven systems operating subject to the occurrence of non-time based events, the non-time based

events occurring under the direction of the auctioneer, whereby the auctioneer manages the psychology and the pace of the auction. Dinwoodie discloses an interactive remote auction bidding system and teaches that the auction site comprises a location remote from the participants at which bids are accepted and the auction is controlled by an auctioneer located at the auction site. The auctioneer functions in a capacity similar to the capacity of an auctioneer in a typical auction where participants are located at the auction site (Col. 3, lines 17-24). The auctioneer inputs data relating to lot number, initial asking bid, predefined increments and foreign conversion factors (Col. 4, lines 48-54). The auctioneer is in complete control of the auction by deciding whether or not an accepted bid was the final asking bid for the lot (Col. 5, lines 60-65); adjusting in real-time a new asking bid (Col. 6, lines 1-5); adjusting predetermined delays based upon the particular bidding environment and aggressiveness of the participants (Col. 6, lines 9-13); determining that the final asking bid has been accepted (Col. 6, lines 15-20); providing warnings that the current bid is about to be accepted as the winning bid and accepting the final bid (Col. 6, lines 19-25); blocking out all participants but the winning bidder and proceeds to the confirmation process with the winning bidder (Col. 6, lines 25-30); providing instructions to the winning bidder (Col. 6, lines 35-40) and reopening bidding to the entire audience at the level of the previous bid (Col. 6, lines 42-45). Thus, it can be seen from the teachings of Dinwoodie that the auctioneer is in control of the psychology and pace of the auction event and that the auction event is not driven by the occurrence of time based events. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Friedland et al and incorporate the teachings of Dinwoodie to allow the auctioneer to remain in control of the auction event by managing the psychology and pace of the auction such as in a typical auction format. This would allow the auctioneer the ability to manage the pace of the auction based upon factors such as the bidding environment and aggressiveness of the participants as suggested by Dinwoodie.

As per **Claim 80**, Friedland et al disclose a method for integrating a remote auction audience with an onsite auction audience within a traditional-style, live auction while leaving an auctioneer in complete

control of the auction event (Col. 2 line 65-Col. 3 line 8; Col. 6, lines 45-50; Col. 7, lines 62-65; Col. 9, lines 50-57), comprising:

- capturing live audio data at a live auction (Col. 8, lines 15-27);

- streaming the captured live audio data to one or more remote auction bidders, each remote auction bidder operating a bidding device, enabling remote auction bidders to hear the auctioneer's chant and enabling the auctioneer to communicate with both the onsite and remote auction bidders, the live audio being received along with the reception of information regarding an item being auctioned at the live auction site and information regarding the acceptance and rejection of onsite and remote auction bids over an IP network (Col. 8, lines 15-27), the bidding device being operable to receive and transmit auction bids for the item being auctioned (Col. 3, lines 23-38; Col. 8, lines 35-50; Col. 13, lines 29-46; Col. 15, lines 1-7; Col. 20, lines 3-17).

- transmit to one or more remote auction bidders auction information for items being auctioned at the live auction site (Col. 3, lines 23-38; Col. 7, lines 34-43, Col. 8, lines 12-27 and 39-50; Col. 13, lines 29-46; Col. 14, lines 44-58; Col. 20, lines 10-17);

- receiving auction bids from one or more remote auction bidders for items being auctioned at the live auction site (Col. 3, lines 23-38; Col. 8 lines 47-50; Col. 13, lines 40-45);

- processing auction bids from one or more onsite auction bidders and remote auction bidders for an item being auctioned at a live auction site (Col. 3, lines 23-49; Col. 7 line 62-Col. 8 line 5; Col. 8, lines 35-40; Col. 9, lines 50-63; Col. 13, lines 39-45; Col. 17, lines 14-27; Col. 20, lines 1-17);

- accepting an auction bid, the auction bid being accepted under the discretionary control of the auctioneer and the accepted auction bid is selected from a plurality of onsite auction bids and remote auction bids (Col. 3, lines 23-38; Col. 8, lines 35-50; Col. 13, lines 29-46; Col. 15, lines 1-7; Col. 20, lines 3-17);

- transmitting to one or more remote auction bidders information regarding the acceptance and rejection of the onsite and remote auction bids by the auctioneer (Col. 3, lines 23-38; Col. 7, lines 34-43; Col. 8, lines 12-17 and 39-50; Col. 13, lines 29-46; Col. 14, lines 44-58; Col. 16, lines 25-30; Col. 20, lines 10-17);

Friedland et al, however, fail to explicitly disclose that the clerk system and bid system being event-driven systems operating subject to the occurrence of non-time based events, the non-time based events occurring under the direction of the auctioneer, whereby the auctioneer manages the psychology and the pace of the auction. Dinwoodie discloses an interactive remote auction bidding system and teaches that the auction site comprises a location remote from the participants at which bids are accepted and the auction is controlled by an auctioneer located at the auction site. The auctioneer functions in a capacity similar to the capacity of an auctioneer in a typical auction where participants are located at the auction site (Col. 3, lines 17-24). The auctioneer inputs data relating to lot number, initial asking bid, predefined increments and foreign conversion factors (Col. 4, lines 48-54). The auctioneer is in complete control of the auction by deciding whether or not an accepted bid was the final asking bid for the lot (Col. 5, lines 60-65); adjusting in real-time a new asking bid (Col. 6, lines 1-5); adjusting predetermined delays based upon the particular bidding environment and aggressiveness of the participants (Col. 6, lines 9-13); determining that the final asking bid has been accepted (Col. 6, lines 15-20); providing warnings that the current bid is about to be accepted as the winning bid and accepting the final bid (Col. 6, lines 19-25); blocking out all participants but the winning bidder and proceeds to the confirmation process with the winning bidder (Col. 6, lines 25-30); providing instructions to the winning bidder (Col. 6, lines 35-40) and reopening bidding to the entire audience at the level of the previous bid (Col. 6, lines 42-45). Thus, it can be seen from the teachings of Dinwoodie that the auctioneer is in control of the psychology and pace of the auction event and that the auction event is not driven by the occurrence of time based events. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Friedland et al and incorporate the teachings of Dinwoodie to allow the auctioneer to remain in control of the auction event by managing the psychology and pace of the auction such as in a typical auction format. This would allow the auctioneer the ability to manage the pace of the auction based upon factors such as the bidding environment and aggressiveness of the participants as suggested by Dinwoodie.

Friedland et al further fails to explicitly use the term "streaming" to describe transmitting the audio data to the bidders. Friedland does discloses that remote bidders monitor the live auction via the status

information broadcast from the DLA auction server, and may also listen to the auction or watch the action via real-time video broadcast of the live auction captured by one or more recording devices and transmitted to the remote bidders via the Internet (an IP network) or possibly through other communications media (Col. 8, lines 17-27). Examiner submits that this teaching in Friedland meets the language recited in this claim. Streaming is defined as "One the Internet, the process of delivering information, especially multimedia sound or video, in a steady flow that the recipient can access as the file is being transmitted" by Microsoft Computer Dictionary, Fourth Edition, copyright 1999. Examiner notes that the courts have reviewed the law of claim interpretation at some length, and explained that dictionaries, encyclopedias and treatises are reliable and objective resources available to assist the court in determining the ordinary and customary meaning of claim terms. See *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 64 USPQ2d 1812 (CAFC 2002) and *Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 65 USPQ2d 1961, 1965 (Fed. Cir. 2003). Examiner submits that the teachings of Friedland meet the definition of "streaming" since Friedland discloses real-time audio and video broadcast via the Internet.

As per **Claim 81**, Friedland et al disclose a method for integrating a remote auction audience with an onsite auction audience within a traditional-style, live auction while leaving an auctioneer in complete control of the auction event (Col. 2 line 65-Col. 3 line 8; Col. 6, lines 45-50; Col. 7, lines 62-65; Col. 9, lines 50-57), comprising:

- capturing live video data at a live auction (Col. 8, lines 15-27);

- streaming the captured live video data to one or more remote auction bidders, each remote auction bidder operating a bidding device, enabling remote auction bidders to view real-time video from the live auction site and enabling the auctioneer to communicate with both the onsite and remote auction bidders, the live video being received along with the reception of information regarding an item being auctioned at the live auction site and information regarding the acceptance and rejection of onsite and remote auction bids over an IP network (Col. 8, lines 15-27), the bidding device being operable to receive

and transmit auction bids for the item being auctioned (Col. 3, lines 23-38; Col. 8, lines 35-50; Col. 13, lines 29-46; Col. 15, lines 1-7; Col. 20, lines 3-17).

- transmit to one or more remote auction bidders auction information for items being auctioned at the live auction site (Col. 3, lines 23-38; Col. 7, lines 34-43, Col. 8, lines 12-27 and 39-50; Col. 13, lines 29-46; Col. 14, lines 44-58; Col. 20, lines 10-17);

- receiving auction bids from one or more remote auction bidders for items being auctioned at the live auction site (Col. 3, lines 23-38; Col. 8 lines 47-50; Col. 13, lines 40-45);

- processing auction bids from one or more onsite auction bidders and remote auction bidders for an item being auctioned at a live auction site (Col. 3, lines 23-49; Col. 7 line 62-Col. 8 line 5; Col. 8, lines 35-40; Col. 9, lines 50-63; Col. 13, lines 39-45; Col. 17, lines 14-27; Col. 20, lines 1-17);

- accepting an auction bid, the auction bid being accepted under the discretionary control of the auctioneer and the accepted auction bid is selected from a plurality of onsite auction bids and remote auction bids (Col. 3, lines 23-38; Col. 8, lines 35-50; Col. 13, lines 29-46; Col. 15, lines 1-7; Col. 20, lines 3-17);

- transmitting to one or more remote auction bidders information regarding the acceptance and rejection of the onsite and remote auction bids by the auctioneer (Col. 3, lines 23-38; Col. 7, lines 34-43; Col. 8, lines 12-17 and 39-50; Col. 13, lines 29-46; Col. 14, lines 44-58; Col. 16, lines 25-30; Col. 20, lines 10-17);

Friedland et al, however, fail to explicitly disclose that the clerk system and bid system being event-driven systems operating subject to the occurrence of non-time based events, the non-time based events occurring under the direction of the auctioneer, whereby the auctioneer manages the psychology and the pace of the auction. Dinwoodie discloses an interactive remote auction bidding system and teaches that the auction site comprises a location remote from the participants at which bids are accepted and the auction is controlled by an auctioneer located at the auction site. The auctioneer functions in a capacity similar to the capacity of an auctioneer in a typical auction where participants are located at the auction site (Col. 3, lines 17-24). The auctioneer inputs data relating to lot number, initial asking bid, predefined increments and foreign conversion factors (Col. 4, lines 48-54). The auctioneer is in complete

control of the auction by deciding whether or not an accepted bid was the final asking bid for the lot (Col. 5, lines 60-65); adjusting in real-time a new asking bid (Col. 6, lines 1-5); adjusting predetermined delays based upon the particular bidding environment and aggressiveness of the participants (Col. 6, lines 9-13); determining that the final asking bid has been accepted (Col. 6, lines 15-20); providing warnings that the current bid is about to be accepted as the winning bid and accepting the final bid (Col. 6, lines 19-25); blocking out all participants but the winning bidder and proceeds to the confirmation process with the winning bidder (Col. 6, lines 25-30); providing instructions to the winning bidder (Col. 6, lines 35-40) and reopening bidding to the entire audience at the level of the previous bid (Col. 6, lines 42-45). Thus, it can be seen from the teachings of Dinwoodie that the auctioneer is in control of the psychology and pace of the auction event and that the auction event is not driven by the occurrence of time based events. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Friedland et al and incorporate the teachings of Dinwoodie to allow the auctioneer to remain in control of the auction event by managing the psychology and pace of the auction such as in a typical auction format. This would allow the auctioneer the ability to manage the pace of the auction based upon factors such as the bidding environment and aggressiveness of the participants as suggested by Dinwoodie.

Friedland et al further fails to explicitly use the term "streaming" to describe transmitting the audio data to the bidders. Friedland does discloses that remote bidders monitor the live auction via the status information broadcast from the DLA auction server, and may also listen to the auction or watch the action via real-time video broadcast of the live auction captured by one or more recording devices and transmitted to the remote bidders via the Internet (an IP network) or possibly through other communications media (Col. 8, lines 17-27). Examiner submits that this teaching in Friedland meets the language recited in this claim. Streaming is defined as "One the Internet, the process of delivering information, especially multimedia sound or video, in a steady flow that the recipient can access as the file is being transmitted" by Microsoft Computer Dictionary, Fourth Edition, copyright 1999. Examiner notes that the courts have reviewed the law of claim interpretation at some length, and explained that dictionaries, encyclopedias and treatises are reliable and objective resources available to assist the court

in determining the ordinary and customary meaning of claim terms. See *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 64 USPQ2d 1812 (CAFC 2002) and *Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 65 USPQ2d 1961, 1965 (Fed. Cir. 2003). Examiner submits that the teachings of Friedland meet the definition of "streaming" since Friedland discloses real-time audio and video broadcast via the Internet.

As per **Claim 82**, Friedland et al disclose a method for integrating a remote auction audience with an onsite auction audience within a traditional-style, live auction while leaving an auctioneer in complete control of the auction event (Col. 2 line 65-Col. 3 line 8; Col. 6, lines 45-50; Col. 7, lines 62-65; Col. 9, lines 50-57), comprising:

- capturing live audio and video data at a live auction (Col. 8, lines 15-27);

- streaming the captured live audio and video data to one or more remote auction bidders, each remote auction bidder operating a bidding device, enabling remote auction bidders to hear the auctioneer's chant and view real-time video from the live auction site, the live audio and video being received along with the reception of information regarding an item being auctioned at the live auction site and information regarding the acceptance and rejection of onsite and remote auction bids over an IP network (Col. 8, lines 15-27), the bidding device being operable to receive and transmit auction bids for the item being auctioned (Col. 3, lines 23-38; Col. 8, lines 35-50; Col. 13, lines 29-46; Col. 15, lines 1-7; Col. 20, lines 3-17).

- transmit to one or more remote auction bidders auction information for items being auctioned at the live auction site (Col. 3, lines 23-38; Col. 7, lines 34-43, Col. 8, lines 12-27 and 39-50; Col. 13, lines 29-46; Col. 14, lines 44-58; Col. 20, lines 10-17);

- receiving auction bids from one or more remote auction bidders for items being auctioned at the live auction site (Col. 3, lines 23-38; Col. 8 lines 47-50; Col. 13, lines 40-45);

- processing auction bids from one or more onsite auction bidders and remote auction bidders for an item being auctioned at a live auction site (Col. 3, lines 23-49; Col. 7 line 62-Col. 8 line 5; Col. 8, lines 35-40; Col. 9, lines 50-63; Col. 13, lines 39-45; Col. 17, lines 14-27; Col. 20, lines 1-17);

- accepting an auction bid, the auction bid being accepted under the discretionary control of the auctioneer and the accepted auction bid is selected from a plurality of onsite auction bids and remote auction bids (Col. 3, lines 23-38; Col. 8, lines 35-50; Col. 13, lines 29-46; Col. 15, lines 1-7; Col. 20, lines 3-17);

- transmitting to one or more remote auction bidders information regarding the acceptance and rejection of the onsite and remote auction bids by the auctioneer (Col. 3, lines 23-38; Col. 7, lines 34-43; Col. 8, lines 12-17 and 39-50; Col. 13, lines 29-46; Col. 14, lines 44-58; Col. 16, lines 25-30; Col. 20, lines 10-17);

Friedland et al, however, fail to explicitly disclose that the clerk system and bid system being event-driven systems operating subject to the occurrence of non-time based events, the non-time based events occurring under the direction of the auctioneer, whereby the auctioneer manages the psychology and the pace of the auction. Dinwoodie discloses an interactive remote auction bidding system and teaches that the auction site comprises a location remote from the participants at which bids are accepted and the auction is controlled by an auctioneer located at the auction site. The auctioneer functions in a capacity similar to the capacity of an auctioneer in a typical auction where participants are located at the auction site (Col. 3, lines 17-24). The auctioneer inputs data relating to lot number, initial asking bid, predefined increments and foreign conversion factors (Col. 4, lines 48-54). The auctioneer is in complete control of the auction by deciding whether or not an accepted bid was the final asking bid for the lot (Col. 5, lines 60-65); adjusting in real-time a new asking bid (Col. 6, lines 1-5); adjusting predetermined delays based upon the particular bidding environment and aggressiveness of the participants (Col. 6, lines 9-13); determining that the final asking bid has been accepted (Col. 6, lines 15-20); providing warnings that the current bid is about to be accepted as the winning bid and accepting the final bid (Col. 6, lines 19-25); blocking out all participants but the winning bidder and proceeds to the confirmation process with the winning bidder (Col. 6, lines 25-30); providing instructions to the winning bidder (Col. 6, lines 35-40) and reopening bidding to the entire audience at the level of the previous bid (Col. 6, lines 42-45). Thus, it can be seen from the teachings of Dinwoodie that the auctioneer is in control of the psychology and pace of the auction event and that the auction event is not driven by the occurrence of time based events. It

would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Friedland et al and incorporate the teachings of Dinwoodie to allow the auctioneer to remain in control of the auction event by managing the psychology and pace of the auction such as in a typical auction format. This would allow the auctioneer the ability to manage the pace of the auction based upon factors such as the bidding environment and aggressiveness of the participants as suggested by Dinwoodie.

Friedland et al further fails to explicitly use the term "streaming" to describe transmitting the audio data to the bidders. Friedland does discloses that remote bidders monitor the live auction via the status information broadcast from the DLA auction server, and may also listen to the auction or watch the action via real-time video broadcast of the live auction captured by one or more recording devices and transmitted to the remote bidders via the Internet (an IP network) or possibly through other communications media (Col. 8, lines 17-27). Examiner submits that this teaching in Friedland meets the language recited in this claim. Streaming is defined as "One the Internet, the process of delivering information, especially multimedia sound or video, in a steady flow that the recipient can access as the file is being transmitted" by Microsoft Computer Dictionary, Fourth Edition, copyright 1999. Examiner notes that the courts have reviewed the law of claim interpretation at some length, and explained that dictionaries, encyclopedias and treatises are reliable and objective resources available to assist the court in determining the ordinary and customary meaning of claim terms. See *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 64 USPQ2d 1812 (CAFC 2002) and *Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 65 USPQ2d 1961, 1965 (Fed. Cir. 2003). Examiner submits that the teachings of Friedland meet the definition of "streaming" since Friedland discloses real-time audio and video broadcast via the Internet.

7. Claims 75 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedland et al, U.S. Patent No. 6,449,601 B1 and Dinwoodie, U.S. Patent No. 6,415,269 B1 as applied above, and further in view of Berent et al, U.S. Patent No. 6,006,201.

As per **Claims 75 and 79**, Friedland et al and Dinwoodie both fail to disclose processing and analyzing the onsite and remote auction bid history for each item auctioned at the live auction site and granting access to the auction bid history. Berent et al disclose an electronic on-line motor vehicle auction and information system and further teach a data mining means for processing and analyzing the bid history for each item auctioned at the live auction site and granting access to the auction bid history (Col. 2, lines 25-30 and Col. 13, lines 4-9). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Friedland et al and Dinwoodie and include a data mining means for processing and analyzing bid history data so that a bidder can prepare for future auctions.

Allowable Subject Matter

8. Claim 83 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. **Examiner's N t** : Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

11. The prior art previously made of record and not relied upon is considered pertinent to applicant's disclosure.

- Handler [WO 00/34899] discloses an integrated auction that includes a live, in-person auction component and an online bidding environment and teaches many aspects of applicant's claimed invention. It is also noted that this publication claims U.S Priority back to 08 December 1998
- Rackson et al disclose a method for multiple auction coordination

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hayes whose telephone number is (703)306-5447. The examiner can normally be reached Monday through Friday from 5:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim Trammell, can be reached on (703) 305-9768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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John W. Hayes
Primary Examiner
Art Unit 3621

March 24, 2004